

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 26, 2011

In the Matter of CARTER, Minors.

No. 300473

Wayne Circuit Court

Family Division

LC No. 98-373556

Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Respondent appeals the trial court's order terminating her parental rights to the two minor children under MCL 712A.19b(3)(g) (failure to provide proper care and custody) and (j) (reasonable likelihood of harm if returned to respondent's home). We affirm.

I. FACTS

Since before 1998, respondent has engaged in substance abuse involving the use of cocaine and suffered from mental health issues, including bipolar disorder and depression. In December 1998, respondent, who was residing at a homeless shelter with her three older children not at issue in this case, suffered a seizure and was taken to the hospital. After being treated and released on the same day, respondent allegedly never returned to the shelter for her children, prompting their removal from her care. Respondent admitted that she had been using cocaine at this time and that she and the children's father had "split up" in July 1998 because of her drug use. The court assumed temporary jurisdiction over the children and ordered respondent to comply with her case service plan, including attending substance abuse treatment.

Respondent initially complied with her case service plan and attended outpatient substance abuse treatment and Narcotics Anonymous meetings. During most of the proceedings concerning the three older children, however, she failed to comply with services, including parenting classes, counseling, substance abuse treatment, and drug screens; she continued to use drugs; and she failed to visit the children or maintain contact with her caseworker. Respondent eventually released her parental rights to the older children, and the court terminated her parental rights to them.

In November 2000, respondent gave birth to a fourth child, who is not at issue in this case. At the time of the fourth child's birth, respondent tested positive for cocaine and admitted using cocaine throughout her pregnancy. The child was immediately removed from respondent's care, and the court assumed temporary jurisdiction over her and ordered respondent to comply

with her case service plan. In December 2000, respondent entered a six-month to one-year residential substance abuse treatment program.

Approximately one and a half years later, in May 2002, the fourth child was placed in respondent's home with in-home services in place because respondent continued to comply with and benefit from services, including parenting classes, counseling, drug screens, inpatient substance abuse treatment, and visits. Unfortunately, approximately ten days later, it was revealed that respondent had tested positive for cocaine in April 2002, and continued to use cocaine after the child was placed in her home, prompting the child's removal from respondent's home again. Thereafter, respondent failed to complete substance abuse treatment, individual counseling, or parenting classes; failed to provide drug screens; continued to use drugs; and eventually stopped visiting the child or maintaining contact with the caseworker. In August 2003, the trial court terminated respondent's parental rights to the fourth child, citing her failure to make progress on her treatment plan, her "chronic" substance abuse, abandonment, and the prior terminations of her parental rights to her older children.

In June 2007, respondent had another child, K.C., who is at issue in this case. After his birth, K.C. was removed from respondent's care pursuant to a petition filed by petitioner, citing respondent's prior terminations, her history of substance abuse, and her mental health issues. The court assumed temporary jurisdiction over K.C. At the time of the adjudication, respondent, who admitted to using cocaine in August 2006, was participating in a substance abuse treatment program, treating her mental health issues, and submitting drug screens. Approximately six months later, in January 2008, K.C. was returned to respondent's care with in-home services in place because she continued to comply with services and substance abuse treatment. After K.C. returned to respondent's home, respondent completed and benefited from services. And in May 2008, the court dismissed the case.

On December 9, 2009, respondent gave birth to another child, M.C., who is at issue in this case. M.C. tested positive for cocaine at birth, and respondent admitted that she had used cocaine during her pregnancy. Respondent began an intensive outpatient substance abuse treatment program.

On December 18, 2009, at the initial dispositional hearing, petitioner filed an original petition requesting termination of respondent's parental rights to M.C. and K.C., citing M.C.'s positive test for cocaine, respondent's prior terminations, and her history of substance abuse and mental illness. M.C. and K.C., then two years old, were removed from respondent's care. Thereafter, in March 2010, the court assumed jurisdiction over the children pursuant to respondent's admissions concerning M.C.'s in utero exposure to drugs, the prior terminations of her parental rights to her four older children, and her history of substance abuse and failing to comply with or benefit from previous case service plans. At this time, respondent also stipulated that clear and convincing evidence supported termination of her parental rights.

Thereafter, respondent continued to attend substance abuse treatment and regularly visited K.C. and M.C. The caseworker was not concerned about the children's safety during the visits and observed that respondent appeared to love her children. Unfortunately, in June 2010, respondent missed two drug screens, and in July 2010, she missed two visits with her children and three drug screens. Also in July 2010, just two weeks short of completing her outpatient

substance abuse treatment, which she had attended since December 2009, respondent relapsed and began “using.” After relapsing, respondent entered an inpatient substance abuse treatment program, which was expected to last one year.

At the time of the August 2010 termination hearing, respondent, whose mental stability was “on and off,” remained in inpatient substance abuse treatment, was receiving treatment for her mental health issues, and was taking her psychotropic medication. K.C., who was three years old and had a speech delay and other developmental delays, was “trying to develop a bond” with respondent, but was “confused” about who his mother was. M.C., who was eight months old, was healthy and had no special needs at the time of the termination hearing. The children were in a foster care placement with foster parents who were willing to adopt them.

The caseworker believed that respondent was not able to properly care for her children because of her substance abuse and mental health issues. She also felt that termination was in the children’s best interest, especially given respondent’s history and her current need for substance abuse treatment, which was expected to last one year.

II. STATUTORY GROUNDS FOR TERMINATION

A. STANDARD OF REVIEW

In order to terminate parental rights, the trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been met by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). We review the trial court’s determination for clear error. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

B. ANALYSIS

We note that during the initial dispositional hearing on the original petition to terminate respondent’s parental rights, her attorney stipulated that clear and convincing evidence supported a statutory basis for termination. “‘A party cannot stipulate a matter and then argue on appeal that the resultant action was error.’” *Holmes v Holmes*, 281 Mich App 575, 588; 760 NW2d 300 (2008), quoting *Chapdelaine v Sochocki*, 247 Mich App 167, 177; 635 NW2d 339 (2001). Accordingly, we agree with petitioner that respondent waived any claim on appeal that the trial court erred in finding that the evidence established a statutory basis for termination.

Regardless, we find no clear error in the trial court’s determination that the evidence sufficiently supported grounds for termination under MCL 712A.19b(3)(g) and (j). The evidence established that respondent had a longstanding history of chronic substance abuse spanning over 12 years. Her past drug abuse, instability, and inability to benefit from substance abuse treatment led to the previous terminations of her parental rights to four children. The youngest child at issue here tested positive for cocaine at birth, and respondent admitted using cocaine during her pregnancy. Despite numerous attempts at inpatient and outpatient substance abuse treatment over the years, respondent has been unable to effectuate lasting change as evidenced by her repeated relapses. Significantly, she relapsed and used cocaine while the termination proceedings concerning the children at issue were underway and when she was participating in substance abuse treatment. On such a record and in light of her mental health issues, which

further compromised her ability to maintain stability, it was clearly evident that respondent would not likely be able to rectify her substance abuse issue to be able to provide proper care and custody for the children within a reasonable time, if ever, especially considering their young ages. Accordingly, the trial court did not clearly err in terminating respondent's rights under subsection (g). The same evidence clearly demonstrated that there was no reasonable likelihood that respondent could ensure a safe, stable, and substance-free environment for the children in the future, warranting termination under MCL 712A.19b(3)(j).

II. BEST INTERESTS ANALYSIS

A. STANDARD OF REVIEW

"If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). We review the trial court's determination for clear error. MCR 3.977(K); *Trejo*, 462 Mich at 356-357.

B. ANALYSIS

The evidence clearly supported the trial court's finding that termination of respondent's parental rights was in the children's best interests, making termination mandatory. MCL 712A.19b(5). The children were very young and had spent a significant portion of their young lives outside of respondent's custody. They were placed with foster parents who could provide them with future permanence. While respondent's current efforts with substance abuse treatment and motivation to care for her children were commendable, future reunification with the children remained largely uncertain given her inability to maintain long-term sobriety. It would be unfair to delay the children the permanency and stability in their lives to which they are entitled.

We also disagree with respondent's contention that the trial court's findings concerning the best interest determination under MCL 712A.19b(5) were insufficient. In child protective proceedings, the trial court must "state on the record or in writing its findings of fact and conclusions of law with respect to whether or not parental rights should be terminated." MCR 3.977(I)(1). "Brief, definite, and pertinent findings and conclusions on contested matters are sufficient." MCR 3.977(I)(1). In the instant case, in addressing the best interests of the children, the court stated that it considered the best interests of the children and found that "termination of parental rights as stated is clearly in the children's best interests." Although the trial court did not cite specific factors concerning the best interests of the children, it was clear from its factual findings with respect to the best interests analysis that the court was aware of the pertinent issues and correctly applied the law. See *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176-177; 530 NW2d 772 (1995). The court's factual findings were more than adequate to inform respondent of the basis of its decision, and any further explanation by the trial court would not facilitate appellate review. *Id.* Accordingly, contrary to respondent's contention

on appeal, remand of this case to the trial court for further explanation is not required.

/s/ Kurtis T. Wilder

/s/ William C. Whitbeck

/s/ Karen M. Fort Hood